

REMARKS

SPECIAL STATUS

Applicant notes that this application has pending over five years. Consistent with MPEP 707.02, this application is now entitled to special status.

SECTION 102 REJECTION OF CLAIM 1 AND PROGENY

In the first Office Action, the Office cited *Hasebe* as anticipating claim 1. In response, Applicant then amended claim 1.

In this third action, the Office has come full circle by making the same section 102 rejection based on *Hasebe* that it made over two years ago. The Office does so even though the claims have already been amended to overcome the first section 102 rejection based on *Hasebe*, and even though the previous examiner was apparently satisfied enough with that amendment to withdraw that rejection.

Applicant notes that in the intervening period, this application has been assigned to a new Examiner. Applicant draws attention to MPEP 706.04 and 704.01, both of which state that

“[f]ull faith and credit should be given to the search and action of a previous examiner unless there is a clear error in the previous action or knowledge of other prior art. In general, an examiner should not take an entirely new approach or attempt to reorient the point of view of a previous examiner, or make a new search in the mere hope of finding something.”

Applicant requests that the previous Examiner's “clear error” be identified for the record. If no such “clear error” can be identified, Applicant requests that the section 102 rejection be withdrawn.

Requirements for section 102 rejection

A proper rejection under section 102 requires that each and every claim limitation be disclosed. Therefore, *Hasebe* must somewhere disclose:

- (1) a client;
- (2) content servers; and

(3) an origin server separate from the content servers.

Like the first Office Action, the present Office Action states:

- Serving said client from an optimal content server selected from said plurality of content servers:
"one information distribution device 60 is selected from a plurality of these information distribution devices 60 that are present, by the user terminal device 10"
- U.S. Patent No. 6,212,570, col. 7, lines 34-36.

Based on the foregoing passage, it is clear that

1. The Office continues to regard *Hasebe*'s terminal device 10 as being the claimed "client"; and
2. The Office continues to regard *Hasebe*'s information distribution devices 60 as the claimed "content servers."

***Hasebe* fails to disclose an "origin server"**

In connection with the claimed "origin server," the Office Action states:

In referring to claims 1, 10, and 13, *Hasebe* shows substantial features of the claimed invention, including:

- **At an origin server separate from the content server, receiving a request from a client for desired content (col. 6, lines 17-27 and col. 9, lines 38 to col. 10, line 25)**

According to the Office Action, the claimed "origin server" is disclosed at col. 6, lines 17-27 (hereafter "passage A") and again at col. 9, line 38-col. 10, line 25 (hereafter "passage B"). We consider these passages one at a time:

Passage A reads as follows:

"More specifically, in this information distribution device selection system of the present invention, when there are at least two or more information distribution devices 60 on interconnected communication networks, a request is received from a user terminal device 10 or an information distribution relay device (not shown) for making a request to the information distribution device 60 on behalf of the user terminal device 10, and a logically closest one among the information distribution devices 60 is selected without making a user conscious."

It is clear that the foregoing passage discusses only: (1) a terminal device 10; and (2) information distribution devices 60. Therefore, if passage A were to teach an origin server, that

origin server would have to be either a terminal device **10** or an information distribution device **60**.

We already know, however, that the terminal device **10** cannot possibly be the claimed "origin server." We know this because the Office has maintained, since *Hasebe* was first cited two years ago, that it is the terminal device **10** corresponds to the claimed "client."

We also know that none of the information distribution devices **60** can possibly be the claimed "origin server." Again, we know this because the Office has consistently maintained that the information distribution devices **60** play the role of the claimed "content servers."

There are no other hardware elements discussed in passage A that could correspond to the claimed origin server. Therefore, by elimination, it is clear that passage A cannot possibly teach the claimed "origin server."

We next turn to the much lengthier passage B, which reads as follows:

"In addition, the routing information is exchanged with the connected communication network exchange devices (step S19), and when a new routing information table is received, the routing information is updated accordingly (step S20) in the routing information table 100.

In the following, the coordinated operations of the respective communication network exchange devices 40 will be described again.

In order to offer a plurality of choices by providing the information distribution devices 60A, 60B and 60C within this system, these information distribution devices 60A, 60B and 60C are connected to the information distribution service communication networks 50A, 50B and 50C within the service providing communication network provider. To these communication networks 50A, 50B and 50C, the same communication network identifier (called identical communication network identifier: which is 192.0.0.0 here) and different communication network identifiers (called individual communication network identifier: which are 192.0.10.0, 192.0.11.0 and 192.0.12.0 here) are assigned, and to the information distribution devices 60A, 60B and 60C, the same communication terminal identifier (called identical communication terminal identifier: which is 192.0.0.1 here) and different communication terminal identifiers (called individual communication terminal identifiers: which are 192.0.10.1, 192.0.11.1 and 192.0.12.1 here) are assigned. The communication networks 50A, 50B and 50C are connected to the communication network exchange devices 20A, 20B and 20C respectively via the communication network exchange devices 40A, 40B and 40C and the inter-connected communication networks. The user terminal devices 10A, 10B and 10C are connected to the respective communication networks which are connected to the communication network exchange devices 20A, 20B and 20C.

In the case where the information distribution devices 60A, 60B and 60C are operating normally, the communication network exchange devices 40A, 40B and 40C that correspond to the respective information distribution devices 60A, 60B and 60C transmit the routing information of the corresponding information distribution service communication network and individual communication network to the neighboring communication network exchange devices.

If any one or all of the information distribution devices 60A, 60B and 60C are not operating normally, the communication network exchange devices 40A, 40B and 40C that correspond to the respective information distribution devices 60A, 60B and 60C stop the transmission of the routing information of the corresponding information distribution service communication network and individual communication network that has been transmitted to the neighboring communication network exchange devices.

The communication network exchange devices 40A, 40B and 40C receive the routing information containing a communication network identifier, a communication rate, a transmission delay, the number of communication network exchange devices present on a communication route, and a policy that is transmitted from the neighboring communication network exchange devices, determines a route to the communication network to be connected from these information, and registers it into the routing information table."

The foregoing passage discusses information distribution devices 60. As already discussed in connection with passage A, none of the information distribution devices 60 can correspond to the claimed "origin server."

However, this is not the end of the inquiry. Passage B also discusses additional hardware elements, namely: (1) communication networks 50A-C, (2) network exchange devices 20A-C; (3) and more network exchange devices 40A-C.

The communication networks 50A-C are simply networks used in communication. There is no reasonable basis for suggesting that any of these communication networks 50A-C is an "origin server."

A network exchange device 40 is "essentially an element for controlling a route at a time of transmitting the information."¹ This does not sound at all like an "origin server."

Hasebe does not discuss the devices 20A-C in detail. However, since they too are named "network exchange devices," it seems reasonable to suppose that they function like the network

¹ *Hasebe*, col. 7, lines 58-60.

exchange devices 40A-C. Hence, like the network exchange devices 40A-C discussed above, there is no apparent basis for considering any of these devices to be an "origin server."

It is apparent therefore that none of the devices discussed in passage B can reasonably be construed as an "origin server." Therefore, passage B, like passage A, fails to teach the claimed "origin server."

Hasebe fails to disclose autonomous system

Claim 1 recites "an autonomous system having a plurality of content servers."

In connection with the autonomous system, the Office Action states:

- **Identifying an autonomous system having a plurality of content servers:**
"Then, the routing control function can be realized either only within the routing control autonomous system 30 (which indicates own communication network range at a time of exchanging routing information using external routing control, means among communication network providers), or as a combination of a plurality of routing control autonomous system 30." (Hasebe, col. 7, line 65 - col. 8, line 4)

The cited passage (hereafter "passage C") reads as follows:

"Then, the routing control function can be realized either only within the routing control autonomous system 30 (which indicates own communication network range at a time of exchanging routing information using external routing control means among communication network providers), or as a combination of a plurality of routing control autonomous system 30. It is preferable to select this according to a size of the information distribution service communication network 50 to be connected to the inter-connected communication networks."

Apparently, the Office regards the "routing control autonomous system 30" disclosed in passage C as corresponding to claim 1's "autonomous system."

As noted above, over the years, the Office has consistently regarded the information distribution devices 60A-C as corresponding to the claimed "content servers." Therefore, to meet the claim limitation of "an autonomous system having a plurality of content servers," the routing control autonomous system 30 would somehow have to "have" two or more information distribution devices 60A-C.

Inspection of FIG. 8 reveals that the information distribution devices **60A-C** are *not* constituent elements of the routing control autonomous system **30**. Accordingly, it is clear that the routing control autonomous system **30** cannot possibly meet claim 1's limitation of "an autonomous system *having a plurality of content servers.*"

***Hasebe* fails to teach all claim limitations**

It is quite clear that *Hasebe* fails to disclose at least two of the limitations in claim 1. This is as true today as it was in March 2005, when the previous examiner withdrew the section 102 rejection based on *Hasebe*.

Since a proper section 102 rejection requires that each and every claim limitation be disclosed, it follows that the section 102 rejection based on *Hasebe* continues to be improper. Accordingly, Applicant requests that it be withdrawn once again.

Claims 2, 3, and 5 all depend on claim 1 and are allowable for at least the same reasons.

SECTION 102 REJECTION OF CLAIMS 6, 10 AND PROGENY

Claim 10 has limitations similar to those of claim 1, and is allowable for at least the same reasons. Claims 11-14 all depend on claim 10 and are allowable for at least the same reasons as claim 10.

Claim 6 recites both the origin server and the autonomous system that includes at least two content servers. For reasons discussed in connection with claim 1, *Hasebe* fails to disclose both of these claim limitations.

Claim 8 depends on claim 6 and is allowable for at least the same reasons as claim 6.

SUMMARY

That Applicant has only presented selected arguments in support of patentability is not to be interpreted as an admission that no other grounds exist.

Applicant requests that the response period be extended under Rule 1.136 and that the extension fee be charged to the deposit account identified below.

Applicant : John Rozen
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Attorney's Docket No.: 11125-017001

Now pending in this application are independent claim 1, with its dependent claims 2, 3, and 5; independent claim 6, with its dependent claim 8; and independent claim 10, with its dependent claims 11-14.

Aside from the extension fee, no additional fees are believed to be due in connection with the filing of this response. However, to the extent fees are due, or if a refund is forthcoming, please adjust our deposit account 06-1050.

Respectfully submitted,

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